

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 14139 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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ASHOK ALIAS MACHLO SOMABHAI ALIAS SOMAIYABHAI RATHOD -
Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MS KRISHNA U MISHRA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
Mr AA Dave, AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 19/12/2007

ORAL JUDGMENT

1. The petitioner-detenu has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside the order dated 19.03.2007 passed by the Police Commissioner, Surat City, whereby, in exercise of power under sub-section (2) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, 'PASA Act') whereby the petitioner has been detained as a bootlegger. In pursuance of the said impugned order, the petitioner is detained in jail.

Heard the learned advocate for the petitioner and the learned AGP for the respondents.

2. From the grounds of detention, it appears that 4 offences being CR.I.No.82,289, 613 of 2006 and 121 of 2007 under sections 66 (1)b and 65(e) etc. under the Bombay Prohibition Act, were registered with Mahidarpura police station, wherein small quantities of 317 litres, 24 litres, 14 litres and 6 litres respectively of country liquor was found from the possession of the detenu. On the basis of registration of these cases, the detaining authority held that the present detenu was carrying activities of selling country liquor which is harmful to the health of the public. It is held by the detaining authority that as the detenu is indulged in illegal activities, it is required to restrain him from carrying out further illegal activities i.e. selling of liquor. The detaining authority has placed reliance on the aforesaid 4 registered offences and statements of unnamed witnesses. Except these two statements, there is no other offence was registered against the present detenu. In the opinion of this court, the

activities of the detenu are, by no stretch of reasoning, said to be disturbing the public order or even the public health suffers and such a subjective satisfaction is reached by the detaining authority. It is seen from the grounds that a general statement that has been made by the detaining authority that consuming liquor is injurious to health and except that, nothing is there on record showing that the activities of the present petitioner are affecting the public order. In fact, a perusal of the order passed by the detaining authority shows that the grounds which are mentioned in the order are in reference to the situation of 'law and order' and not 'public order'. Therefore, on this ground, the subjective satisfaction of the detaining authority is vitiated on account of non-application of mind and the impugned order, therefore, deserves to be quashed and set aside.

3. Learned AGP vehemently argued that the impugned order and the grounds stated therein were precise and the order based on subjective satisfaction of the authorized officer ought not to be set aside on a different interpretation of the material on record. Under such circumstances, the

impugned order of detention was not only perfectly legal but justified according to the submission.

4. In the case of **Ashokbhai Jivraj @ Jivabhai Solanki v. Police Commissioner, Surat** (2001 (1) GLH 393), having considered the decision of the Hon'ble Apex Court in the case of **Ram Manohar Lohia v. State of Bihar (AIR 1966 SC 740)**, this court held that the cases wherein the detention order passed on the basis of the statements of the witnesses falls under the maintenance of "law and order" and not "public order".

5. Applying the ratio of the above decisions, it is clear that before passing an order of detention of a detenu, the detaining authority must come to a definite finding that there is threat to the 'public order' and it is very clear that the present case would not fall within the category of threat to a public order. In that view of the matter, when the order of detention has been passed by the detaining authority without having adequate grounds for passing the said order, cannot be sustained and, therefore, it deserves to be quashed and set aside.

6. In the result, this Special Civil Application is allowed. The impugned order of detention dated 19.3.2007 passed by the Commissioner of Police, Surat City is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

[M.D. SHAH, J.]

msh